



**ROBINSON MCFADDEN**  
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

July 3, 2008

**VIA ELECTRONIC FILING**

Mr. Charles Terreni  
Chief Clerk of the Commission  
Public Service Commission of South Carolina  
Synergy Business Park, Saluda Building  
101 Executive Center Drive  
Columbia, SC 29210

**Re: SCCTA-USF 2007  
Docket No. 1997-239-C**

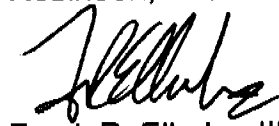
Dear Mr. Terreni:

Enclosed for filing please find the Submission of South Carolina Television Association, CompSouth, tw telecom of south Carolina llc, and Nuvox Communications Incorporated: (1) Return to the Motion of the SCTC and (2) Motion Requesting a Review of Additional USF Issues.

If you have any questions, please have someone on your staff contact me.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.



Frank R. Ellerbe, III

FRE/lla

Enclosures

cc: Burnet R. Maybank, III, Esq.  
Patrick W. Turner, Esq.  
Robert E. Tyson, Jr., Esq.  
Faye A. Flowers, Esq.  
John J. Pringle, Esq.  
Florence P. Belser, Esq.  
Nanette S. Edwards, Esq.

**Frank R. Ellerbe, III**

1901 MAIN STREET, SUITE 1200

POST OFFICE BOX 944

COLUMBIA, SOUTH CAROLINA 29202

PH

(803) 779-8900 | (803) 227-1112 *direct*

FAX

(803) 252-0724 | (803) 744-1556 *direct*

fellerbe@robinsonlaw.com

Craig K. Davis, Esq.  
John F. Beach, Esq.  
M. John Bowen, Jr., Esq.  
Ross A. Buntrock, Esq.  
Scott A. Elliott, Esq.  
Steven W. Hamm, Esq.  
John M.S. Hoefer, Esq.  
Susan B. Berkowitz, Esq.  
Anthony Mastando, Esq.  
J. Phillip Carver, Esq.  
Sonia Daniels  
Stan J. Bugner  
Zel Gilbert  
William R.L. Atkinson, Esq.

STATE OF SOUTH CAROLINA

IN RE:

Intrastate Universal Service Fund

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

COVER SHEET

DOCKET  
NUMBER: 1997-239-C

(Please type or print)

Submitted by: Bonnie D. Shealy

SC Bar Number: 11125

Address: Robinson, McFadden & Moore, P.C.  
PO Box 944  
Columbia, SC 29202

Telephone: (803) 779-8900

Fax: (803) 252-0724

Other: \_\_\_\_\_

Email: bshealy@robinsonlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

**DOCKETING INFORMATION** (Check all that apply)

- ☐ Emergency Relief demanded in petition      ☐ Request for item to be placed on Commission's Agenda expeditiously
- ☐ Other: \_\_\_\_\_

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input checked="" type="checkbox"/> Return to Petition
<input checked="" type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 1997-239-C**

IN RE:	)	
	)	
	)	<b>SUBMISSION OF SOUTH CAROLINA</b>
	)	<b>CABLE TELEVISION ASSOCIATION,</b>
Proceeding to Establish Guidelines for	)	<b>COMPSOUTH, tw telecom of south</b>
an Intrastate Universal Service Fund	)	<b>carolina llc, AND NUVOX</b>
(USF)	)	<b>COMMUNICATIONS INCORPORATED:</b>
	)	<b>(1) RETURN TO THE MOTION OF THE</b>
	)	<b>SCTC AND (2) MOTION REQUESTING</b>
	)	<b>A REVIEW OF ADDITIONAL USF</b>
	)	<b>ISSUES</b>

---

This return and motion is submitted by the South Carolina Cable Television Association, tw telecom of south carolina llc, CompSouth and Nuvox ("CLECs"). In this combined filing CLECs (1) explain their opposition to the SCTC motion seeking to avoid any review by this Commission of the operation of the South Carolina USF and (2) explain the USF issues which this Commission should address. The return and motion are submitted together because they are substantially related.

**I. RETURN TO SCTC MOTION**

The aim of the motion to dismiss filed by the SCTC is to prevent this Commission from conducting any review of the operation of the USF. SCTC argues that the Supreme Court's decision in Office of Regulatory Staff v. South Carolina Public Service Commission, et al. 374 S.C. 46, 647 S.E.2d 223 (2007)

was an approval of the operation of the USF and makes any review by this Commission unnecessary. That argument ignores the fact that the Commission orders reviewed by the Supreme Court were issued in 2000 and 2001 and that the USF was not even in operation when the record before the Supreme Court was closed.

Order No. 2001-704, which was the Order on Reconsideration considered by the Court, was issued on August 31, 2001. Since that date there have been significant changes in the law and in the telecommunications market which require a detailed review by this Commission of the operation of the USF. Among those changes are the following:

- According to data compiled and maintained by the FCC Wireline Competition Bureau, Incumbent Local Exchange Carriers in South Carolina served 2,276,681 access lines in December 2001. That number has dropped to 1,865,872 access lines as of June 2007, yet no ILEC has ever experienced a reduction in the amount of USF support it receives.
- In 2005 the South Carolina General Assembly passed Act 5 (codified at §58-9-285) which deregulated “bundles” and “contract offerings.” That Act removed the authority of this Commission to regulate the prices charged by LECs for telecommunications services provided as part of bundles or pursuant to contract offerings. Any access lines provided as parts of bundles or contract offerings are no longer eligible for support from the USF.
- In 2001 three LECs were alternatively regulated. Since that time 18

additional LECs have chosen to be alternatively regulated. See ORS Annual Report on the Status of Local Telephone Competition, Nov. 2007, at p.9 and Order No. 2008-395 in Docket No. 2008-104-C (Farmers Telephone Cooperative). This development means that virtually the entire \$53 million annual USF subsidy goes to companies which are not subject to rate of return regulation and which do not report their earnings to this Commission.

- Three wireless companies – Hargray Wireless (Order No. 2007-804; Docket 2003-158-C), FTC Wireless (Order No. 2007-805; Docket No. 2007-193-C) and HTC Communications, LLC (Order No. 2008-273; Docket No. 2007-402), all of which are affiliates of SCTC companies – have been designated as Eligible Telecommunications Carriers for purposes of federal support. Under this Commission’s USF plan ETC designation is supposed to require those companies to begin contributing to the SC USF.
- Since inception the USF tax has increased from 2.3 percent to 3.6 percent. In recent years that tax has increased despite the fact that the amount of money being paid out has remained the same.
- The “phase-in” plan of the South Carolina Telephone Association has resulted in control of the USF being firmly in the hands of the ILECs. In connection with previous attempts by CLECs and others to request reviews of the USF, the ILECs have sometimes made the argument that no one should be concerned about the operation of the USF because it is

only partially funded. This argument is nonsense. Under the rationale of the phase-in plan ILECs always have 100 percent of the subsidy which this Commission determined they needed -- part of it coming from explicit support (the USF) and part coming from implicit support (the "contribution" element contained in other rates). Under the phase-in plan further reviews of the USF are triggered by filings by the ILECs. The approach advocated by the SCTC in its motion would prevent this Commission from reviewing any aspect of the operation of the USF until such time as the ILECs decide to make those filings.

These are only a few of the significant legal and market developments which affect the operation of the USF. CLECs offer these as examples of why this Commission should not only deny the SCTC motion but also should conduct a broader review of the USF to address various aspects of its operation. As discussed below in connection with CLECs' motion requesting review of specific issues, the USF is not currently in compliance with this Commission's orders or the South Carolina and federal statutory provisions governing the operation of the USF. This Commission should deny the SCTC motion and move forward to address broader issues affecting the operation of the USF.

## **II. MOTION REQUESTING REVIEW OF USF ISSUES**

CLECs request that the Commission revise its notice of hearing in this docket to reflect that it will review additional issues relating to the operation of the USF. The non-exhaustive list of issues which CLECs urge the Commission to

review follow.

**A. Support for lines which are sold as parts of bundles or contract offerings.**

The Commission should investigate the question of whether any ILECs are receiving USF support based on access lines that are sold as part of bundled or contract offerings. The USF guidelines should be revised to address the issue. Section 58-9-280(E) provides that the USF is to be used to support the universal availability of basic local exchange service. Pursuant to S.C. Code Section 58-9-280(E)(8), the definition of services that can be supported by the USF may only be expanded after a hearing specifically addressing that issue. No such hearing has been held; therefore ILECs should only receive subsidies for services sold as tariffed offerings described by §58-9-10(9). The USF is intended to provide support only for basic local service sold at regulated rates for which there is a maximum rate set by this Commission. Section 58-9-285 deregulates both bundled and contract offerings. ILECs should not be receiving subsidies from the USF for unregulated services.

**B. ILECs should be required to annually report the number of their access lines which are eligible for support.**

In Order No. 2001-954 in this Docket, this Commission approved certain "final documents." The final documents included the USF guidelines and Exhibit B to those guidelines, entitled "South Carolina Universal Service Fund Administrative Procedures." Both of these documents were drafted and proposed by the South Carolina Telephone Association before approval by the



Commission. In Section VII, the Administrative Procedures specify certain data that must be supplied every year by ILECs. In subsection VII, B. (1), the ILECs are required to report the number of "residential USF access lines served by USF Designated Support Service Area" and in subsection VII, B. (2), the ILECs are required to report the number of "single-line business USF access lines served by USF Designated Support Service Area."

The ILECs are apparently not making these required reports. Instead, in a period of declining access line counts they continue to receive per line USF support based on line counts from years ago. Allowing the ILECs to recover funds from the USF in this fashion allows them to over-recover and means that companies paying into the USF are being over-charged.

**C. Wireless Carriers which have been designated ETCs are required to pay into the USF.**

In Order No. 2001-419 in this Docket this Commission addressed the issue of whether wireless carriers would be required to pay into the USF. In deciding that wireless carriers would not be required to pay the Commission made this finding: "...we find that, if a wireless carrier applies to this Commission for carrier of last resort or eligible telecommunications carrier status, such application would be considered a declaration of that carrier's intent to offer services that compete with local telecommunications services being provided in this State, and that carrier will be required, upon approval of the request for carrier of last resort or eligible telecommunications carrier status, to contribute to the State USF." Order 2001-419, p.37. As discussed above, three wireless

carriers have received ETC status. This Commission should take steps to enforce its order requiring them to pay into the USF.

**D. The Commission must make changes in the USF Guidelines to ensure that ILECs report the amount of the implicit subsidies they continue to receive.**

The amount of "support" that ILECs may obtain from the USF is established in §58-9-280(E)(4). As part of establishing the USF the Commission calculated a total subsidy amount for each ILEC. Under the Commission's "phase-in" plan an ILEC is supposed to receive a total subsidy amount through a combination of an explicit subsidy payment from the USF and continued implicit support from other services. Under the current guidelines the ORS, as administrator of the USF, knows the total amount of support to which the ILEC (assuming the ILECs begin properly reporting their access lines which are eligible for support) is entitled and knows the amount of explicit subsidy the ILEC is receiving, but it does not know what implicit support the ILEC is receiving from other services. The ORS cannot determine whether ILECs are over-recovering unless the Commission promulgates guidelines that require the reporting of implicit support received by ILECs from other services.

Developments over the last several years have increased the need for revisions to the guidelines to prevent over-recovery. The South Carolina General Assembly has enacted legislation to promote competition in the telecommunications market. That legislation is intended to replace regulation with competition, and it has allowed most of the Local Exchange Companies to move from being rate-base regulated to being "alternatively" regulated. The

alternatively regulated companies no longer report their earnings to the Commission, meaning that these companies no longer submit regular earnings reports. Thus the Commission and the ORS have lost an important tool that could have alerted them to potential over-recovery from the USF. In addition, it is critical to the functioning of the competitive telecommunications market envisioned by the General Assembly that companies compete on a "level playing field." Over-recovery of subsidies by ILECs will give them an unfair advantage. It is the responsibility of the Commission and the ORS to revise the guidelines to include safeguards to prevent such over-recovery.

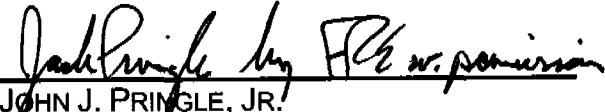
### **III. CONCLUSION**

The USF is not currently being operated in a way that is consistent with the applicable legal requirements. As discussed above, there are a number of provisions of current orders that are not being followed. In addition, the current operation of the USF violates South Carolina and federal statutes. Most significantly, the USF is being operated in violation of 47 U.S.C. §254(f). That provision authorizes the states to implement programs to protect and advance universal service. However, it requires that any such programs be done in a manner consistent with the FCC's USF rules and that the state fund must be operated in a way that is "equitable and nondiscriminatory." The South Carolina USF violates this provision by favoring ILECs to the disadvantage of CLECs and others. For the foregoing reasons, this Commission should deny SCTC's motion to dismiss this proceeding and must immediately take steps to revise and reform

the operation of the South Carolina USF.

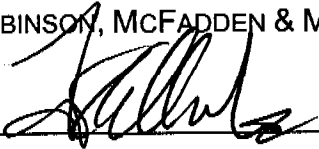
Dated July 3, 2008.

ELLIS LAWHORNE & SIMS, P.A.

  
\_\_\_\_\_  
JOHN J. PRINGLE, JR.  
P.O. Box 2285  
COLUMBIA, S.C. 29202  
TELEPHONE (803) 343-1270  
[JPRINGLE@ELLISLAWHORNE.COM](mailto:JPRINGLE@ELLISLAWHORNE.COM)

COUNSEL FOR NuVox COMMUNICATIONS  
INCORPORATED

ROBINSON, MCFADDEN & MOORE, P.C.

  
\_\_\_\_\_  
Frank R. Ellerbe, III  
Bonnie D. Shealy  
Post Office Box 944  
Columbia, SC 29202  
Telephone (803) 779-8900  
[fellerbe@robinsonlaw.com](mailto:fellerbe@robinsonlaw.com)  
[bshealy@robinsonlaw.com](mailto:bshealy@robinsonlaw.com)

COUNSEL FOR SOUTH CAROLINA CABLE  
TELEVISION ASSOCIATION, COMPSOUTH  
AND tw telecom of south carolina llc



John J. Pringle, Jr., Esquire  
Ellis, Lawhorne & Sims, P.A.  
Post Office Box 2285  
Columbia, SC 29202

Florence P. Belser, General Counsel  
Nanette S. Edwards, Esquire  
Office of Regulatory Staff  
Post Office Box 11263  
Columbia, SC 29211

Craig K. Davis, Esquire  
1524 Buck Hill Landing  
Ridgeway, SC 29205-1327

John F. Beach, Esquire  
Ellis, Lawhorne & Sims, P.A.  
P.O. Box 2285  
Columbia, SC 29202

M. John Bowen, Jr., Esquire  
Margaret M. Fox, Esquire  
McNair Law Firm, P.A.  
P.O. Box 11390  
Columbia, SC 29211

Ross Allen Buntrock, Esquire  
Womble Carlyle Sandridge & Rice, PLLC  
1401 Eye Street, 17th Floor  
Washington, DC 20005

Scott A. Elliott, Esquire  
Elliott & Elliott  
721 Olive Street  
Columbia, SC 29205

Steven W. Hamm, Esquire  
Richardson, Plowden, Carpenter & Robinson, PA  
1900 Barnwell Street  
P.O. Drawer 7788  
Columbia, SC 29202-7788

John M.S. Hoefer, Esquire  
Benjamin P. Mustian, Esquire  
Willoughby & Hoefer, P.A.  
1022 Calhoun Street, Suite 320  
Post Office Box 8416  
Columbia, SC 29202

Susan B. Berkowitz, Esquire  
SC Appleseed Legal Justice Center  
Post Office Box 7187  
Columbia, SC 29202

Anthony Mastando, Esquire  
ITC DeltaCom Communications  
7037 Old Madison Pike, Suite 400  
Huntsville, AL 35806

J. Phillip Carver, Esquire  
AT&T  
675 West Peachtree Street, N.E.  
Atlanta, GA 30375

Sonia Daniels  
Regulatory Specialist  
AT&T Communications of the Southern States, LLC  
1230 Peach Street Street, Fourth Floor  
Atlanta, GA 30309

Stan J. Bugner, State Director  
Verizon Select Services, Inc.  
1301 Gervais Street, Suite 825  
Columbia, SC 29201

Zel Gilbert  
Sprint United  
1122 Lady Street, Suite 1050  
Columbia, SC 29201

William R. L. Atkinson, Esquire  
Sprint Nextel Corporation  
233 Peachtree Street, N.E.  
Suite 2200  
Atlanta, GA 30303

Dated at Columbia, South Carolina this 3rd day of July, 2008.

  
\_\_\_\_\_  
Leslie Allen